

Janet Napolitano  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Stephen A. Owens  
Director

December 23, 2003

Mr. Wayne Nasti  
Regional Administrator  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street, ORA-1  
San Francisco, CA 94105

Re: Submittal of Arizona Regional Haze State Implementation Plan (SIP)

Dear Mr. Nasti:

Consistent with the provisions of Arizona Revised Statutes (ARS) Title 49, §§ 49-104, 49-106, 49-404, 49-406, 49-414, and 49-414.01 (Enclosure 1) and the Code of Federal Regulations (CFR) Title 40, §§ 51.102-51.104, the Arizona Department of Environmental Quality (ADEQ) hereby adopts and submits to the U.S. Environmental Protection Agency (EPA), five copies of the Arizona Regional Haze State Implementation Plan. The submittal contains three enclosures:

- Enclosure one contains copies of the State's legal authority to develop and submit air quality plans, including the specific authority to develop the Regional Haze plan.
- Enclosure two contains the SIP completeness checklist.
- Enclosure three contains the Arizona Regional Haze State Implementation Plan.

The State of Arizona has elected to develop a Regional Haze SIP under the Section 309 of the federal Regional Haze Rule. The Arizona Regional Haze SIP utilizes the recommendations of the Grand Canyon Visibility Transport Commission (GCVTC) as an initial approach to remedying existing and preventing future pollution that contributes to regional haze in the national parks and wilderness areas (Class I areas) on the Colorado Plateau. Arizona's four Class I areas on the Colorado Plateau – Grand Canyon National Park, Sycamore Canyon Wilderness Area, Petrified Forest National Park, and Mt. Baldy Wilderness Area – are specifically addressed in the SIP. The SIP contains commitments by the State of Arizona based on the GCVTC recommendations and the requirements outlined in 40 CFR 51.309 of the federal Regional Haze Rule.

With this submittal, ADEQ requests that EPA approve this implementation plan.

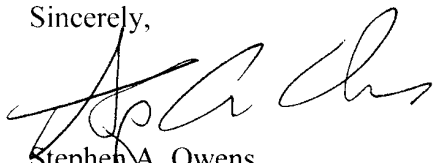
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Wayne Natri  
December 23, 2003  
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If you have any questions, please contact Nancy Wrona, Director, Air Quality Division, at (602) 771-2308 or Theresa Pella, Air Quality Planning Section Manager, at (602) 771-2375.

Sincerely,



Stephen A. Owens  
Director

Enclosures (3)

cc: Nancy Wrona, w/o enclosures, ADEQ  
Colleen McKaughan, w/o enclosures, EPA

## ENCLOSURE 1

State Authority

# ARIZONA LAWS RELATING TO ENVIRONMENTAL QUALITY

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## 2002–2003 EDITION



Reprinted from  
Arizona Revised Statutes  
(included are portions of Titles 11, 26, 27, 28, 32, 41, 42, 44, 45  
and all of Title 49)

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Office of the State Bar of Arizona  
111 West Monroe, Suite 1800  
Phoenix, Arizona 85003-1742  
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*Title 49, Chapter 1, Article 1, relating to the department of environmental quality, is repealed on January 1, 2006, by § 41-3005.14.*

### § 49-101. Definitions

In this title, unless the context otherwise requires:

1. "Approximately equal" means, for purposes of fees adopted pursuant to § 49-480, excluding per ton emissions fees, an amount that is not greater than ten per cent more than the fees or costs charged by the state for similar state permits or approvals.

2. "Department" means the department of environmental quality.

3. "Director" means the director of environmental quality who is also the director of the department.

Added by Laws 1986, Ch. 368, § 34, eff. July 1, 1987. Amended by Laws 2000, Ch. 353, § 2, eff. July 18, 2000, retroactively effective to July 1, 2000.

### § 49-102. Department of environmental quality; director; deputy director; division directors; divisions

A. The department of environmental quality is established.

B. The governor shall appoint a director of environmental quality pursuant to § 38-211. The director shall administer the department and serve at the pleasure of the governor. The director is entitled to receive compensation as determined under § 38-611. The director shall appoint a deputy director and, subject to legislative appropriation, may appoint division directors if necessary. The positions of director and deputy director are exempt from title 41, chapter 4, articles 5 and 6 relating to state service.<sup>1</sup>

C. To be eligible for appointment as director a person must have a background or experience in one or more of the following areas:

1. Public administration.
2. Planning.
3. Personnel management.
4. Law.
5. Environmental science.

D. The director may organize the department into divisions as he deems appropriate.

Added by Laws 1986, Ch. 368, § 34, eff. July 1, 1987. Amended by Laws 1994, Ch. 95, § 1.

<sup>1</sup> Sections 41-761 et seq. and 41-781 et seq.

### § 49-103. Department employees; legal counsel

A. The director, subject to title 41, chapter 4, articles 5 and 6,<sup>1</sup> shall employ, determine the conditions of employment and specify the duties of administrative, secretarial and clerical employees as he deems necessary.

B. The attorney general shall be the legal advisor of the department and shall give legal services as the department requires. Compensation for personnel assigned by the attorney general to perform such services shall be a charge against appropriations to the department. The attorney general shall prosecute and defend in the name of this state all actions necessary to carry out the provisions of this title.

Added by Laws 1986, Ch. 368, § 34, eff. July 1, 1987.

<sup>1</sup> Sections 41-761 et seq. and 41-781 et seq.

### § 49-104. Powers and duties of the department and director

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.

2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.

3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.

4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.

5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.

6. Make annual reports to the governor and the legislature on its activities, its finances and the scope of its operations.

7. Promote and coordinate the management of air resources to assure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.

8. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.

9. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.

10. Assure the preservation and enhancement of natural beauty and man-made scenic qualities.

11. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.<sup>1</sup>

12. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies.

13. Prevent pollution through the regulation of the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.

14. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.

15. Assist the department of health services in recruiting and training state, local and district health department personnel.

16. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

17. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

B. The department, through the director, shall:

1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.

2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.

3. Utilize any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.

4. Adopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title.

5. Contract with other agencies including laboratories in furthering any department program.

6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.

7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.

8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.

9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.

10. Adopt and enforce rules relating to approving design documents for constructing, improving

and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.

11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:

(a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.

(b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.

12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at such places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to § 36-136, subsection H, paragraph 10.

13. Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:

(a) Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.

(b) Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.

(c) Require that design documents for all sewage collection systems, sewage collection system

extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation systems be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.

(d) Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.

14. Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules shall:

(a) Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.

(b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes shall be licensed by the department subject to compliance with the rules.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499)<sup>2</sup> and title 26, chapter 2, article 3.<sup>3</sup>

16. Approve remediation levels pursuant to article 4 of this chapter.<sup>4</sup>

C. The department may charge fees to cover the costs of all permits and inspections it performs to insure compliance with rules adopted under § 49-203, subsection A, paragraph 6, except that state agencies are exempt from paying the fees. Monies collected pursuant to this subsection shall be deposited in the water quality fee fund established by § 49-210.

D. The director may:

1. If he has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or

vehicle as reasonably necessary to protect the environment if a violation exists.

2. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

Added by Laws 1986, Ch. 368, § 34, eff. July 1, 1987. Amended by Laws 1987, Ch. 317, § 14, eff. Aug. 18, 1987, retroactively effective to July 1, 1987; Laws 1989, Ch. 238, § 10; Laws 1995, Ch. 202, § 2, eff. July 1, 1996; Laws 1995, Ch. 231, § 1; Laws 1995, Ch. 232, § 2; Laws 1995, Ch. 261, § 1; Laws 1996, Ch. 351, § 37; Laws 1997, Ch. 49, § 6; Laws 1997, Ch. 287, § 17, eff. April 29, 1997; Laws 1997, Ch. 296, § 1; Laws 1999, Ch. 26, § 3, eff. Jan. 1, 2001; Laws 2000, Ch. 225, § 1; Laws 2000, Ch. 225, § 2, eff. Jan. 1, 2001; Laws 2001, Ch. 21, § 3; Laws 2001, Ch. 231, § 12.

<sup>1</sup> Sections 49-141 et seq., 49-201 et seq. and 49-401 et seq.

<sup>2</sup> 42 U.S.C.A. § 11021 et seq.

<sup>3</sup> Section 26-341 et seq.

<sup>4</sup> Section 49-151 et seq.

### § 49-105. Annual report on violations and enforcement

Not later than December 1 of each year the director shall submit to the governor, the speaker of the house of representatives and the president of the senate a report listing the following information for the preceding fiscal year ending June 30:

1. The number of site or facility inspections conducted pursuant to chapters 2 and 5 of this title,<sup>1</sup> including information on the reasons for and nature of such inspections.

2. The number of permits or approvals issued pursuant to chapters 2 and 5 of this title.

3. The names of all persons who were the subject of an enforcement action by the department as a result of a violation of any provision of chapter 2 or 5 of this title, including any rules, permits, orders or conditions of approval issued under those chapters.

4. A brief description of the number and nature of violations committed by each person named under paragraph 3 and a description of any enforcement action taken in response to the violations.

5. A summary of all administrative penalties assessed pursuant to enforcement of the federal safe drinking water act and the violations of that act.

Added by Laws 1986, Ch. 368, § 34, eff. July 1, 1987. Amended by Laws 1994, Ch. 95, § 2; Laws 1997, Ch. 130, § 11, eff. April 22, 1997; Laws 1999, Ch. 295, § 26.

<sup>1</sup> Section 49-201 et seq. and 49-901 et seq.

### § 49-106. Statewide application of rules

The rules adopted by the department apply and shall be observed throughout this state, or as provided by their terms, and the appropriate local officer, council or board shall enforce them. This section does not limit the authority of local governing bodies to adopt ordinances and rules within their respective jurisdictions if those ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the department, but this section does not grant local governing bodies any authority not otherwise provided by separate state law.

Added by Laws 1987, Ch. 317, § 15, eff. Aug. 18, 1987, retroactively effective to July 1, 1987.

### § 49-107. Local delegation of state authority

A. The director may delegate to a local environmental agency, county health department, public health services district or municipality any functions, powers or duties which the director believes can be competently, efficiently and properly performed by the local agency if the local agency accepts the delegation and agrees to perform the delegated functions, powers and duties according to the standards of performance required by law and prescribed by the director.

B. Monies appropriated or otherwise made available to the department for distribution to local agencies may be allocated or reallocated in a manner designed to assure that the recognized local activities and the delegated functions, powers and duties are accomplished according to the applicable standards of performance.

C. The director may terminate, for cause, all or part of the delegation and reallocate all or part of any monies that may have been conditioned on the further performance of the delegated functions, powers and duties.

Added by Laws 1987, Ch. 317, § 15, eff. Aug. 18, 1987, retroactively effective to July 1, 1987. Amended by Laws 2000, Ch. 11, § 20.

### § 49-108. Hazardous materials emergency response operations

The director of environmental quality shall establish a hazardous materials emergency response and recovery organizational unit in the department to function as the scientific support, health, safety and environmental element of the hazardous materials



emergency management program pursuant to § 26-305.02.

Added by Laws 1988, Ch. 292, § 5, eff. July 8, 1988.

**§ 49-109. Certificate of disclosure of violations; definition; remedies**

**A.** The following persons shall file a certificate of disclosure with the department as prescribed by this section:

1. A person who is engaged in an activity subject to regulation under this title and who has been convicted of a felony involving laws related to solid waste, special waste, hazardous waste, water quality or air quality in any state or federal jurisdiction or for a violation of 42 United States Code § 9603<sup>1</sup> within the five year period immediately preceding execution of the certificate.

2. A person who is engaged in an activity subject to regulation under this title and who is or has been subject in any civil proceeding to an injunction, decree, judgment or permanent order of any state or federal court within the five year period immediately preceding the execution of the certificate that involved a violation of laws of that jurisdiction relating to solid waste, special waste, hazardous waste, used oil or used oil fuel, petroleum, water quality or air quality, except for a misdemeanor violation of § 49-550, or a violation of 42 United States Code § 9603.

**B.** The certificate of disclosure prescribed by subsection A of this section shall contain the following:

1. Identification of that person, including without limitation present full name, all prior names or aliases, including full birth name, present house address and all prior addresses for the immediately preceding five year period, date and location of birth and social security number.

2. The nature and description of each conviction or judicial action, the date and location, the court and public agency involved, and the file or cause number of the case.

3. A written declaration that each signer swears to its contents under penalty of perjury.

**C.** The certificate of disclosure submitted on behalf of a corporation shall be executed by any two executive officers or directors of that corporation.

**D.** For purposes of subsection A of this section, "person" means a natural person, any public or private corporation, its officers, directors, trustees,

incorporators and persons controlling or holding over ten per cent of the issued and outstanding common shares or ten per cent of any other proprietary, beneficial or membership interest in the corporation, a partnership, including all general partners and limited partners controlling a ten per cent or more beneficial interest in the partnership, association or society of persons, the federal government and any of its departments or agencies, this state and any of its agencies, departments, political subdivisions, counties, towns or municipal corporations.

**E.** Initial certificates shall be delivered to the department within ninety days after the person first becomes subject to the disclosure requirements of this section. Certificates shall be filed annually thereafter within ninety days after the close of that person's fiscal year as reported on the initial certificate.

**F.** By December 1 of each year, the department shall provide the attorney general with a list of all persons who were convicted of the crimes or who are the subject of the judicial actions described in subsection A of this section, as indicated from the certificates of disclosure filed during the preceding year.

**G.** In lieu of the certificate of disclosure prescribed by this section, a corporation may submit to the director copies of annual reports filed with the securities and exchange commission pursuant to § 13 or 15(d) of the securities exchange act of 1934 (15 United States Code § 78),<sup>2</sup> commonly known as a "10-K form", within ninety days of filing the annual report. The initial submission to the director shall include 10-K forms for the preceding five years.

**H.** A person who contributes information for a certificate of disclosure and who makes an untrue statement of material fact concerning the requirements of subsection B of this section or withholds any material fact concerning the requirements of subsection B of this section or a person who is obligated to file a certificate of disclosure and who fails to file the certificate is subject to the remedies prescribed in § 49-110.

Added by Laws 1991, Ch. 315, § 6, eff. July 3, 1991.  
Amended by Laws 1992, Ch. 201, § 1; Laws 1994, Ch. 95, § 3.

<sup>1</sup> 42 U.S.C.A. § 9603.

<sup>2</sup> 15 U.S.C.A. §§ 78l, 78m.

9. Reduction of traffic congestion at major intersections.

10. Site specific transportation control measures.

11. Reversible lanes.

12. Fixed lanes for buses and carpools.

13. Encouragement of pedestrian travel.

14. Encouragement of bicycle travel.

15. Development of bicycle travel facilities.

16. Employer incentives regarding ride share programs.

17. Modification of work schedules.

18. Strategies for controlling the generation of air pollution by nonresidents of nonattainment or maintenance areas.

19. Use of alternative fuels.

20. Use of emission control devices on public diesel powered vehicles.

21. Paving of roads.

22. Restricting off-road vehicle travel.

23. Construction site air pollution control.

24. Other air quality control measures.

F. Each regional planning agency shall consult with the department of transportation to coordinate the plans developed pursuant to subsection E of this section with transportation plans developed by the department of transportation pursuant to any other law.

Added as § 36-1706 by Laws 1967, Ch. 2, § 9. Amended by Laws 1969, Ch. 53, § 17; Laws 1970, Ch. 164, § 28, eff. May 18, 1970; Laws 1971, Ch. 190, § 12; Laws 1973, Ch. 158, § 201; Laws 1982, Ch. 259, § 2; Laws 1986, Ch. 319, § 2, eff. Jan. 1, 1987. Renumbered as § 49-402 by Laws 1986, Ch. 368, § 37, subsec. B, eff. July 1, 1987. Amended by Laws 1987, Ch. 317, § 35, eff. Aug. 18, 1987, retroactively effective to July 1, 1987; Laws 1992, Ch. 299, § 8, eff. Sept. 1, 1993; Laws 1994, Ch. 353, § 21, eff. April 26, 1994; Laws 1999, Ch. 295, § 41; Laws 2002, Ch. 110, § 1.

<sup>1</sup> Section 49-541 et seq.

<sup>2</sup> Section 49-471 et seq.

**§ 49-403. Repealed by Laws 1988, Ch. 252, § 16, eff. Nov. 2, 1992**

**§ 49-404. State implementation plan**

A. The director shall maintain a state implementation plan that provides for implementation, maintenance and enforcement of national ambient

air quality standards and protection of visibility as required by the clean air act.

B. The director may adopt rules that describe procedures for adoption of revisions to the state implementation plan.

C. The state implementation plan and all revisions adopted before September 30, 1992 remain in effect according to their terms, except to the extent otherwise provided by the clean air act, inconsistent with any provision of the clean air act, or revised by the administrator. No control requirement in effect, or required to be adopted by an order, settlement agreement or plan in effect, before the enactment of the clean air act in any area which is a nonattainment or maintenance area for any air pollutant may be modified after enactment in any manner unless the modification insures equivalent or greater emission reductions of the air pollutant. The director shall evaluate and adopt revisions to the plan in conformity with federal regulations and guidelines promulgated by the administrator for those purposes until the rules required by subsection B are effective.

Added by Laws 1992, Ch. 299, § 9. Amended by Laws 1999, Ch. 295, § 42.

**§ 49-405. Attainment area designations**

A. The governor may designate the status and classification of areas of this state with respect to attainment of national ambient air quality standards.

B. The director shall adopt rules that both:

1. Describe the geographic extent of attainment, nonattainment or unclassifiable areas of this state for all pollutants for which a national ambient air quality standard exists.

2. Establish procedures and criteria for changing the designations of areas that include all of the following:

(a) Technical bases for proposed changes, including ambient air quality data, types and distributions of sources of air pollution, population density and projected population growth, transportation system characteristics, traffic congestion, projected industrial and commercial development, meteorology, pollution transport and political boundaries.

(b) Provisions for review of and public comment on proposed changes to area designations.

(c) All area designations adopted by the administrator as of May 30, 1992.

Added by Laws 1992, Ch. 299, § 9.

#### § 49-406. Nonattainment area plan

A. For any ozone, carbon monoxide or particulate nonattainment or maintenance area the governor shall certify the metropolitan planning organization designated to conduct the continuing, cooperative and comprehensive transportation planning process for that area under 23 United States Code § 134<sup>1</sup> as the agency responsible for the development of a nonattainment or maintenance area plan for that area.

B. For any ozone, carbon monoxide or particulate nonattainment or maintenance area for which no metropolitan planning organization exists, the department shall be certified as the agency responsible for development of a nonattainment or maintenance area plan for that area.

C. For any ozone, carbon monoxide or particulate nonattainment or maintenance area, the department, the planning agency certified pursuant to subsection A of this section on behalf of elected officials of affected local government, the county air pollution control department or district, and the department of transportation shall, by November 15, 1992, and from time to time as necessary, jointly review and update planning procedures or develop new procedures.

D. In preparing the procedures described in subsection C of this section, the department, the planning agency certified pursuant to subsection A of this section on behalf of elected officials of affected local government, the county air pollution control department or district, and the department of transportation shall determine which elements of each revised implementation plan will be developed, adopted, and implemented, through means including enforcement, by the state and which by local governments or regional agencies, or any combination of local governments, regional agencies or the state.

E. The department, the planning agency certified pursuant to subsection A of this section on behalf of elected officials of affected local government, the county air pollution control department or district, and the department of transportation shall enter into a memorandum of agreement for the purpose of coordinating the implementation of the procedures described in subsection C and D of this section.

F. At a minimum, the memorandum of agreement shall contain:

1. The relevant responsibilities and authorities of each of the coordinating agencies.

2. As appropriate, procedures, schedules and responsibilities for development of nonattainment or maintenance area plans or plan revisions and for determining reasonable further progress.

3. Assurances for adequate plan implementation.

4. Procedures and responsibilities for tracking plan implementation.

5. Responsibilities for preparing demographic projections including land use, housing, and employment.

6. Coordination with transportation programs.

7. Procedures and responsibilities for adoption of control measures and emissions limitations.

8. Responsibilities for collecting air quality, transportation and emissions data.

9. Responsibility for conducting air quality modeling.

10. Responsibility for administering and enforcing stationary source controls.

11. Provisions for the timely and periodic sharing of all data and information among the signatories relating to:

- (a) Demographics.

- (b) Transportation.

- (c) Emissions inventories.

- (d) Assumptions used in developing the model.

- (e) Results of modeling done in support of the plan.

- (f) Monitoring data.

G. Each agency that commits to implement any emission limitation or other control measure, means or technique contained in the implementation plan shall describe that commitment in a resolution adopted by the appropriate governing body of the agency. The resolution shall specify the following:

1. Its authority for implementing the limitation or measure as provided in statute, ordinance or rule.

2. A program for the enforcement of the limitation or measure.

3. The level of personnel and funding allocated to the implementation of the measure.

H. The state, in accordance with the rules adopted pursuant to § 49-404, and the governing body of the metropolitan planning organization shall adopt each nonattainment or maintenance area plan developed by a certified metropolitan planning organization. The adopted nonattainment or maintenance area plan shall be transmitted to the department for inclusion in the state implementation plan provided for under § 49-404.

I. After adoption of a nonattainment or maintenance area plan, if on the basis of the reasonable further progress determination described in subsection F of this section or other information, the control officer determines that any person has failed to implement an emission limitation or other control measure, means or technique as described in the resolution adopted pursuant to subsection G of this section, the control officer shall issue a written finding to the person, and shall provide an opportunity to confer. If the control officer subsequently determines that the failure has not been corrected, the county attorney, at the request of the control officer, shall file an action in superior court for a preliminary injunction, a permanent injunction, or any other relief provided by law.

J. After adoption of a nonattainment or maintenance area plan, if, on the basis of the reasonable further progress determination described in subsection F of this section or other information, the director determines that any person has failed to implement an emission limitation or other control measure, means or technique as described in the resolution adopted pursuant to subsection G of this section, and that the control officer has failed to act pursuant to subsection I of this section, the director shall issue a written finding to the person and shall provide an opportunity to confer. If the director subsequently determines that the failure has not been corrected, the attorney general, at the request of the director, shall file an action in superior court for a preliminary injunction, a permanent injunction, or any other relief provided by law.

K. Notwithstanding subsections A and B of this section, in any metropolitan area with a metropolitan statistical area population of less than two hundred fifty thousand persons, the governor shall designate an agency that meets the criteria of § 174 of the clean air act and that is recommended by the city that causes the metropolitan area to exist and the affected county. That agency shall prepare and adopt the nonattainment or maintenance area plan. If the governor does not designate an agency, the department shall be certified as

the agency responsible for the development of a nonattainment or maintenance area plan for that area.

Added by Laws 1992, Ch. 299, § 9. Amended by Laws 1994, Ch. 134, § 1; Laws 1998, Ch. 217, § 15.

<sup>1</sup> 23 U.S.C.A. § 134.

#### § 49-407. Private right of action; citizen suits

A. Except as provided in subsection B, a person having an interest which is or may be adversely affected may commence a civil action in superior court on his own behalf against the director alleging a failure of the director to perform an act or duty under this article or article 2 of this chapter<sup>1</sup> that is not discretionary with the director. The court has jurisdiction to order the director to perform the act or duty.

B. No action may be commenced in any of the following cases:

1. Before sixty days after the plaintiff has given notice of the alleged violation to the director and to an alleged violator.

2. If the director determines no violation has occurred, or if the director has initiated an administrative enforcement action by issuing a warning letter, notice of violation or issuing an order.

3. If the attorney general or county attorney has commenced and is diligently prosecuting a civil action in the superior court to require compliance with the provision, order, permit, standard, rule or emission limitation.

C. In an action commenced under this section the plaintiff has the burden of proof.

D. The court, in issuing a final order in an action brought under this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any party that substantially prevails.

Added by Laws 1992, Ch. 299, § 9. Amended by Laws 1995, Ch. 231, § 7.

<sup>1</sup> Sections 49-401 et seq. or 49-421 et seq.

#### § 49-408. Air quality conformity; definition

A. Any revision to the state implementation plan adopted pursuant to 40 Code of Federal Regulations, part 51, subpart T shall be no more stringent than required under those regulations. No state agency, metropolitan planning organization or local transportation agency shall take action that

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the fund pursuant to this section. The report shall be submitted to the president of the senate and the speaker of the house of representatives no later than September 1 of each year.

N. Monies in the Arizona clean air fund are exempt from the provisions of § 35-190 relating to the lapsing of appropriations. On notice from the department, the state treasurer shall invest and divest monies in the fund as provided by § 35-313, and monies earned from investment shall be credited to the fund.

O. For purposes of this section, "natural gas delivery system" means any facility that provides for the fueling of compressed natural gas or liquefied natural gas vehicles.

Added as § 41-1516 by Laws 1994, Ch. 353, § 11, eff. April 26, 1994. Amended by Laws 1996, 7th S.S., Ch. 6, § 23; Laws 1997, Ch. 1, § 439, eff. Oct. 1, 1997; Laws 1997, Ch. 214, § 17; Laws 1998, Ch. 217, § 9; Laws 1998, Ch. 221, § 7; Laws 1998, 4th S.S., Ch. 3, § 4; Laws 1999, Ch. 168, § 13, eff. May 5, 1999; Laws 1999, Ch. 295, § 5; Laws 2000, Ch. 193, § 446; Laws 2000, Ch. 405, § 20, eff. April 28, 2000; Laws 2000, 6th S.S., Ch. 1, § 1, eff. Oct. 20, 2000; Laws 2000, 7th S.S., Ch. 1, eff. Dec. 14, 2000; Laws 2001, Ch. 179, § 1, eff. April 21, 2001; Laws 2001, Ch. 371, § 5. Renumbered § 49-411 by Laws 2002, Ch. 260, § 11.

**Repeal**

*This section is repealed by Laws 2002, Ch. 260, § 21, effective July 1, 2003.*

**§ 49-411.01. Renumbered as § 49-414.01****§ 49-412. Alternative fuel delivery systems; standardized waivers**

The department shall develop a standardized waiver application form that shall be used by state agencies, counties, cities, towns, school districts and federal fleets with vehicles that operate primarily in area A as defined in § 49-541 to document and justify the exemption of that entity's vehicles from compliance with the statutory goals for alternative fuel vehicles. The application form shall include, at a minimum, a life cycle cost formula for traditional fuel vehicles and alternative fuel vehicles that incorporates the vehicle's capital costs or conversion costs, annual fuel cost, annual maintenance and repair costs and salvage value, all as adjusted to present value. The department shall deliver to the secretary of state and the secretary of state shall publish in the Arizona administrative

register copies of completed waiver applications that are received by the department.

Added as § 41-1516.01 by Laws 1996, 7th S.S., Ch. 6, § 24. Renumbered as § 49-412 by Laws 2002, Ch. 260, § 12.

**§ 49-413. Clean burning alternative fuels; public refueling**

The department shall pursue the establishment of a network of public refueling stations so that members of the public have access throughout the state to alternative fuels as a major goal.

Added as § 49-572.01 by Laws 1994, Ch. 353, § 26, eff. April 26, 1994. Renumbered as § 41-1517. Renumbered as § 49-413 and amended by Laws 2002, Ch. 260, § 13.

**§ 49-414. Regional haze program; authority**

The department may participate in interstate regional haze programs that are established by the regional planning organization that is authorized for this region pursuant to 40 code of federal regulations part 51, subpart P and the clean air act. Added as § 49-411 by Laws 2002, Ch. 251, § 2. Renumbered as § 49-414.

**§ 49-414.01. State implementation plan revision; regional haze; rules**

A. The director shall submit to the administrator state implementation plan revisions to address regional haze visibility impairment in mandatory federal class I areas. The state implementation plan revisions submitted to the administrator shall address any of the following as necessary to submit an approvable plan:

1. The applicable time period.
2. A monitoring strategy for regional haze visibility impairment.
3. Calculations of baseline visibility conditions and natural visibility conditions.
4. Comprehensive emissions tracking strategies for clean air corridors.
5. Implementation of stationary source emissions reduction strategies.
6. Provisions addressing mobile source emissions.
7. Programs related to emissions from fire sources defined as wildland fire, including wildfire, prescribed natural fire, wildland fire use, prescribed fire and agricultural burning conducted and occurring on federal, state and private lands.

8. Provisions addressing the impact of dust emissions on visibility impairment.

9. Provisions relating to pollution prevention.

10. Best available retrofit technology requirements.

11. A report that assesses emissions control strategies for stationary source emissions of oxides of nitrogen and particulate matter and the degree of visibility improvement that would result from implemented strategies.

12. A long-term strategy that addresses regional haze visibility impairment.

13. Additional measures necessary to make reasonable progress toward remedying existing and preventing future regional haze in mandatory federal class I areas.

14. For the Arizona Grand canyon visibility transport commission class I areas, a projection of the improvement in visibility conditions that are expected from the implementation of all measures set forth in the implementation plan.

15. For the eight other Arizona mandatory federal class I areas, provisions for the establishment of reasonable progress goals.

16. Periodic progress reports.

**B.** The department may establish intrastate market trading programs and participate in interstate market trading programs as necessary to submit an approvable plan under subsection A.

**C.** The director may adopt rules necessary for the revisions to the state implementation plan that address regional haze.

**D.** Except as provided in subsection E, the department may meet the requirements of subsection A by submitting plan revisions under 40 code of federal regulations § 51.308 or § 51.309.

**E.** The department may submit a plan revision under 40 code of federal regulations § 51.309 only if the revision contains a determination pursuant to 40 code of federal regulations § 51.309(d)(5)(ii) that mobile source emissions from areas within the state do not contribute significantly to visibility impairment in any of the Grand canyon visibility transport commission class I areas.

Added as § 49-411.01 by Laws 2002, Ch. 251, § 2. Renumbered as § 49-414.01.

## ARTICLE 2. STATE AIR POLLUTION CONTROL

### Termination Under Sunset Law

*Section 41-3000.08, providing for termination of the air pollution control hearing board, effective July 1, 2000, and for repeal of Title 49, Ch. 3, Art. 2, effective January 1, 2001, was itself repealed by Laws 2000, Ch. 353, § 1, effective July 18, 2000, retroactively effective to July 1, 2000.*

## § 49-421. Definitions

In this article, unless the context otherwise requires:

1. "Air contaminants" includes smoke, vapors, charred paper, dust, soot, grime, carbon, fumes, gases, sulfuric acid mist aerosols, aerosol droplets, odors, particulate matter, wind-borne matter, radioactive materials, or noxious chemicals, or any other material in the outdoor atmosphere.

2. "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants or combinations thereof in sufficient quantities, which either alone or in connection with other substances by reason of their concentration and duration are or tend to be injurious to human, plant or animal life, or cause damage to property, or unreasonably interfere with the comfortable enjoyment of life or property of a substantial part of a community, or obscure visibility, or which in any way degrade the quality of the ambient air below the standards established by the director.

3. "Person" includes any public or private corporation, company, partnership, firm, association or society of persons, the federal government and any of its departments or agencies, the state and any of its agencies, departments or political subdivisions, as well as a natural person.

4. "Special inspection warrant" means an order in writing issued in the name of the state of Arizona, signed by a magistrate, directed to the director or his deputies, authorizing him to enter into or upon any public or private property for the purpose of making an inspection authorized by law.

Added as § 36-1701 by Laws 1967, Ch. 2, § 9. Amended by Laws 1969, Ch. 53, § 15; Laws 1970, Ch. 164, § 24, eff. May 18, 1970; Laws 1973, Ch. 158, § 197. Renumbered as § 49-421 and amended by Laws 1986, Ch. 368, §§ 37, subsec. C, 76, eff. July 1, 1987. Amended by Laws 2000, Ch. 353, § 3, eff. July 18, 2000, retroactively effective to July 1, 2000.

## ENCLOSURE 2

### SIP Completeness Checklist

# **STATE IMPLEMENTATION PLAN COMPLETENESS CHECKLIST**

## **ARIZONA REGIONAL HAZE STATE IMPLEMENTATION PLAN (SIP)**

**1. SUBMITTAL LETTER FROM GOVERNOR/DESIGNEE**

See cover letter.

**2. EVIDENCE OF ADOPTION**

See cover letter.

**3. STATE LEGAL AUTHORITY FOR ADOPTION/IMPLEMENTATION**

See Enclosure 1.

**4. COMPLETE COPY OF APPLICABLE REGULATION**

Not Applicable.

**5. EVIDENCE THAT ARIZONA ADMINISTRATIVE PROCEDURE ACT  
REQUIREMENTS (ARS ' ' 41-1021 through 1036) WERE MET FOR RULES**

See Appendix A-5 and A-10.

**6 EVIDENCE OF PUBLIC HEARING PER 40 CFR 51.102**

See Appendix A-18.

**7 PUBLIC COMMENTS AND AGENCY RESPONSE**

See Appendix A-18.

**8. IDENTIFICATION OF POLLUTANTS REGULATED BY RULE**

Sulfur dioxide (SO<sub>2</sub>), Oxides of Nitrogen (NO<sub>x</sub>), Volatile Organic Compounds (VOCs),  
and Particulate Matter (PM).

**9. IDENTIFICATION OF SOURCES/ATTAINMENT STATUS**

Not Applicable.



10. WRITTEN SUMMARY OF RULE/RULE CHANGE

See Chapter 5 and Appendix A-5 (Reasonably Attributable Visibility Impairment Rule); Chapter 7 and Appendix A-7 (Draft WEB Trading Program Rule); Chapter 10 and Appendix A-10 (Fire Rules).

11. RULE CHANGES INDICATED BY UNDERLINING AND CROSS-OUTS

See Appendix A-5 and Appendix A-10.

12. RULES' EFFECT ON EMISSIONS

See Technical Support Document, Chapter 2.

13. DEMONSTRATION THAT NAAQS, PSD INCREMENTS AND RFP ARE PROTECTED

Not Applicable.

14. EVIDENCE THAT EMISSIONS LIMITATIONS ARE BASED ON CONTINUOUS EMISSIONS REDUCTION TECHNOLOGY

Not Applicable.

15. MODELING SUPPORT

See Technical Support Document, Chapter 1.

16. IDENTIFICATION OF RULE SECTIONS CONTAINING EMISSION LIMITS, WORK PRACTICE STANDARDS, AND/OR RECORD KEEPING/REPORTING REQUIREMENTS

See Appendix A-5, Appendix A-7, and Appendix A-10.

17. COMPLIANCE/ENFORCEMENT STRATEGIES

See Enclosure 3, Chapter 1.

18. ECONOMIC TECHNICAL JUSTIFICATION FOR DEVIATION FROM EPA POLICIES

No known deviation from EPA policy.

## ENCLOSURE 3

Arizona Regional Haze State Implementation Plan (SIP)